

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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| BRIAN TODD, |) | |
| Petitioner |) | |
| |) | Civil Action No. 04-CR-10246-PBS |
| v. |) | |
| |) | |
| DAVID L. WINN, Warden |) | |
| Respondent. |) | |
| |) | |

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|--------------------------|---|-----------------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| |) | |
| v. |) | Criminal Action No.: 06-40142-JLT |
| |) | |
| BRIAN TODD |) | |
| |) | |

DEFENDANT'S PROPOSED DRAFT ORDER

NOW COMES the defendant, Brian M. Todd (hereinafter "TODD") and respectfully moves this Honorable Court to order the government to grant his habeas petition for Pre-Release Custody Placement pursuant to 28 U.S.C., § 2241 and 18 U.S.C. § 3621(b) and deny the government's Motion to Dismiss. As reasons therefore, the defendant states the following:

1. TODD was convicted of bank larceny in the United States District Court for the District of Massachusetts and was sentenced to fifteen (15) months incarceration (See Case No.: 04-10246-PBS (D. Mass.) TODD is currently detained in the Federal Medical Center in Devens, MA. He began his sentence on January 6, 2006.
2. TODD is currently assigned to the work camp, Unit I at Devens, MA where he has maintained an outstanding work record with no infractions.
3. TODD's minor child, Logan Todd, DOB: September 6, 2001 is non-ambulatory and has recently suffered significant deterioration to his health which, in turn, has compromised his mother's health and ability to care and provide for both herself and the child without TODD's support.

4. David A. Ansel, M.D., F.A.A.P. of the Children's Medical Office of North Andover, P.C., treats Logan Todd and has indicated that it is "particularly important for Logan to be able to maintain a stable, consistent relationship with his father at this time." (See attached Exhibit 1).
5. TODD has requested but not been considered for placement in a Residential Reentry Center ("RRC") (formerly known as Community Corrections Center") because he, (as Patrick Ward, Attorney Advisor indicated in an August 31, 2006 declaration), "currently has an active state warrant within his release area." (See attached Exhibit 2). This is erroneous.
6. On September 19, 2006, George W. Corkery, Chief Probation Officer for the Lawrence District Court advised, via letter, that there are no outstanding warrants for TODD in the state's warrant management system. (See attached Exhibit 3).
7. TODD believes he is eligible for release on or about August 22, 2006 pursuant to when he began serving his sentence and the recent decision of Saris, J in Putnam v. Winn, 2006 WL 188-18-18 (D.Mass. 2006)(Saris, J.); quoting Goldings v. Winn, 383 F.3d 17 1st Cir. 2006), Woodall v. BOP, 432 F3d 235 (3rd Cir. 2005), Fults v. Sanders, 442 F.3d 1088 (8th Cir. 2006)
8. The new Bureau of Prison (hereinafter "BOP") rule, finalized on January 10, 2005, categorically precludes assignment to the RCC/CCC except for the lesser of ten percent of the sentence being served or six months.
9. TODD herein challenges the BOP rule and as Saris, J. stated in Putnam, supra, asserts that he "has habeas jurisdiction under 28 U.S.C. 2241 to challenge the execution of his sentence because the BOP rule upon which it was predicated is contrary to federal law under the APA."
10. Saris, J. held in Putnam that the "new BOP policy that precludes any consideration of a person eligible for the CCC based on factors mandated by Congress is too blunt an instrument and it contravenes the statutory scheme" of 18 U.S.C. § 3621(b).
11. The BOP has the discretion to place a prisoner where it wishes so long as it considers the factors enumerated in 18 U.S.C. §3621. See also Fults, 442 F3d at 1091-1092; adapting Woodall, supra.

WHEREFORE, the petitioner requests his habeas petition be allowed, the government's Motion to Dismiss be denied and the BOP consider petitioner's placement at a RCC/CCC facility in good faith.

Dated: September 22, 2006

RESPECTFULLY SUBMITTED
FOR THE DEFENDANT
BY HIS ATTORNEY

/s/ Scott F. Gleason

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CERTIFICATE OF SERVICE

I, Scott F. Gleason, Esquire, do hereby certify that I have this date filed a copy of the within document, postage prepaid to: S. Waqar Hasib and Donald L. Cabell, Assistant U.S. Attorneys at the United States District Court, Boston, MA by electronic filing.

Dated: September 22, 2006

/s/ Scott F. Gleason

Scott F. Gleason, Esquire

